

ONE OF MY EMPLOYEES HAS TESTED POSITIVE FOR COVID-19. WHAT NOW?

If your dealership has not been confronted with this situation already, it is likely you will be in the coming weeks. A dealer who learns that one of its employees has tested positive for COVID-19 must be sure to protect the privacy of the infected employee while also taking steps to protect the health of its other employees and its customers. This bulletin will provide recommendations and best practices for approaching this situation.

What precautions should I take with the infected employee?

To the extent he or she is not already working from home, the infected employee should be sent home immediately. [The Center for Disease Control \(CDC\)'s Environmental Cleaning and Disinfection Recommendations](#) advise that areas in which the infected employee regularly worked within the previous fourteen days should be closed off to other employees and customers and professionally cleaned and sanitized.

The dealer should ask the infected employee to identify coworkers and customers who were within close proximity to them during the previous fourteen days. The dealer should contact the coworkers and customers identified by the employee and advise them that an employee has tested positive for COVID-19. The Americans with Disability Act (ADA)'s privacy rules restrict employers from sharing the personal health information of an employee. To protect his or her confidentiality, the infected employee should NOT be identified by name. Nor should other identifying information (*e.g.*, department, position) be provided. Dealers should also consider notifying the entire office an employee has tested positive for COVID-19 and directing any questions or concerns to the designated human resources contact.

The CDC has drafted a detailed [Interim Guidance for Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings](#) (Interim Guidance) explaining when an infected employee may return to work. The answer to this question varies depending on whether the employee with COVID-19 has exhibited symptoms or is asymptomatic. If the employee has exhibited symptoms, he or she should not return to work until:

- At least three days have passed since the resolution of fever without fever-reducing drugs;
- Improvement in respiratory symptoms (*e.g.*, cough, shortness of breath); and
- At least seven days have passed since symptoms have first appeared.

Alternatively, formerly symptomatic employees who are able to produce a negative result on a subsequent COVID-19 test, may return to work if they achieved resolution of fever without drugs and improvement in respiratory symptoms.

If the employee is asymptomatic, he or she may return to work when at least seven days have passed since the date she first tested positive. For an additional three days, the employee should continue to practice social distancing and wear a cloth mask over her face and nose.

If feasible, the dealer may request that the employee provide a healthcare provider's note to validate their return from work. Keep in mind, however, that busy healthcare providers may not be able or willing to provide return to work notes. The CDC's Interim Guidance discourages (but does not prohibit) requiring a healthcare provider's note for employees who are sick with acute respiratory illness to

validate their return to work, in order to reduce the burden on busy healthcare providers. Further, some state and local agencies have issued limitations on an employer's ability to require a return-to-work certification.

Notwithstanding the CDC's Interim Guidance, the [Equal Employment Opportunity Commission \(EEOC\)](#) [has issued a press release](#) expressly stating that employers may require employees returning to work to provide a doctor's note stating they are fit for duty. Dealers who decide not to require a doctor's note may simply ask employees if they are experiencing COVID-19 symptoms, provided the response is maintained as a confidential medical record. Additionally, dealers may measure an employee's body temperature upon their return to work.

Whatever approach the dealer adopts, the dealer should be sure not to require more medical information than is necessary to determine whether the employee's COVID-19 status presents a direct threat to the dealer's other employees or customers. Requiring submission of medical information unrelated to the COVID-19 threat could violate the ADA's privacy rules. Moreover, dealers must be sure to enforce their return-to-work policies consistently to avoid disparate treatment of employees with similar symptoms.

What precautions should I take with the infected employee's coworkers?

The CDC has issued updated [Interim Guidance for Critical Infrastructure Workers](#) who have been exposed to COVID-19 but remain asymptomatic. Under previous guidance, the CDC recommend that critical infrastructure workers who may have been exposed to a person with a confirmed or suspected case of COVID-19 should be sent home and directed to self-monitor symptoms for 14 days. The updated guidance is less severe and aims to maintain workforce continuity, provided that Critical Infrastructure workers who have had an exposure but remain asymptomatic adhere to the following practices prior to and during their work shift:

1. **Pre-Screen:** Dealers should measure the employee's temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.
2. **Regular Monitoring:** As long as the employee doesn't have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.
3. **Wear a Mask:** The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Dealers can issue facemasks or can approve employees' supplied cloth face coverings in the event of shortages.
4. **Social Distance:** The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
5. **Disinfect and Clean work spaces:** Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.

Which types of leave are employees entitled to who are sent home due to COVID-19 infection/exposure?

Subject to a few exceptions, most provisions of the [Families First Coronavirus Response Act](#) (FFCRA) apply to employers who employ less than 500 employees. Among other provisions, the FFCRA legislation includes the Emergency Paid Sick Leave Act (EPSLA). Under the EPSLA, employees who have tested

positive for or are exhibiting symptoms of COVID-19 and are unable to work or telework will be entitled to 80 hours of paid sick leave in addition to paid sick leave already offered by the employer. Dealers that provide paid leave under the FFCRA are entitled, if necessary, to make payments from withheld federal tax withholdings to cover the cost of the leave, subject to future payment to the IRS.

It is unlikely that an asymptomatic or mild case of COVID-19 will constitute a serious health condition under the [Family and Medical Leave Act](#) (FMLA). However, severe cases and those causing complications to employees with underlying or pre-existing health conditions may entitle the employee to the typical twelve weeks of unpaid FMLA leave. Given the uncertainties surrounding COVID-19, dealers should err on the side of caution in providing FMLA leave to COVID-19 related absences.

Asymptomatic employees or those suffering only mild symptoms will likely not qualify as disabled under the ADA. However, employees who suffer severe reactions to COVID-19 or who have underlying or pre-existing health conditions exacerbated by COVID-19 may be entitled to leave or reasonable accommodation under the ADA. The ADA requires employers to evaluate employees on an individual basis.

Remember to express sympathy

The recipient of the news that an employee has tested positive for COVID-19 should express sympathy for the infected employee. The employee is most likely concerned for the health of her family and coworkers and her job status going forward. Dealers should not make promises to the employee that it cannot keep. But, a dealer may assure the employee that it will, to the greatest extent feasible, protect the confidentiality of the employee's positive test.

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